Filed 6/5/17 In re D.S. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D.S. et al., Persons Coming Under the Juvenile Court Law.	B277595 (Los Angeles County Super. Ct. No. DK18342)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. C.A., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Stephen C. Marpet, Temporary Judge. (Pursuant to Cal. Const., art. VI, 21.) Affirmed.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

Mother C.A. appeals from dispositional orders concerning her children, D.S. and L.M. She contends she was denied her due process right to a contested disposition hearing when the juvenile court denied her request that disposition be "put over" to enable the Los Angeles County Department of Children and Family Services (DCFS) to investigate her case further. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and G.M. (father) are parents to L.M. Mother's son from a previous relationship, D.S, also lived primarily with mother and father, though he visited his father, G.S., regularly.

Incident Report

On April 21, 2016, the Long Beach Police Department received a report that a couple was "huffing" balloons in a car parked near a gas station. Officer J. Ortiz responded to the scene and conducted a traffic stop of the car, which had a broken taillight. Father was driving, mother was in the front passenger seat, and then-20-month-old L.M. was in a car seat in the back. Then-seven-year-old D.S. was not present.

Officer Ortiz searched the car and found a tank of nitrous oxide on the rear floorboard, concealed under mother's sweater. The tank was directly in front of L.M.'s car seat. Officer Ortiz found a full balloon next to L.M.'s car seat, and empty balloons throughout the car and in father's pants pocket.

Officer Ortiz's report stated that father admitted to inhaling nitrous oxide and said he "messed up" by getting high

with his wife and child inside the car. He also admitted that he lacked both a driver's license and car insurance. Mother, meanwhile, claimed father was transporting the tank for his work at an auto body shop; she had no explanation why her sweater was atop the condensation-covered tank. Mother denied ingesting or seeing father ingest nitrous oxide.

Father was arrested and charged with driving while his license was suspended due to a DUI conviction (Veh. Code, § 14601.2, subd. (a)), driving without car insurance (Veh. Code, § 16020, subd. (a)), driving with a broken stoplamp (Veh. Code, § 24603), and misdemeanor child endangerment (Pen. Code, § 273a, subd. (b).) Mother "was released at the scene with no further incident and she took [L.M.] with her."

DCFS Investigation

DCFS initiated an investigation of the family the following day. The social worker found no marks or bruises on L.M., whom she described as "a little dirty" but otherwise healthy, "playful," and well bonded to mother and father. D.S. reported that he felt safe at home and that mother and father did not drink or use drugs. He also reported that he had a good relationship with his father, G.S.

During their initial interviews, mother and father claimed the tank of nitrous oxide was for father's work and had been in the trunk rather than the back seat. Father also disclosed that he had a medical marijuana card. Both parents agreed to submit to a drug test that day, but neither appeared; father claimed he had to work, and mother claimed she was not comfortable being observed during the test due to a recent miscarriage. When the DCFS social worker later suggested that mother and father were being uncooperative by failing to drug test, "mother assured that

they want to cooperate with DCFS" and agreed to participate in an "upfront assessment" conducted by city officials.

During the upfront assessment, which was conducted in late May 2016, father denied using nitrous oxide and mother reiterated her claim that father had been transporting the tank for work. Mother disclosed that she once was arrested for slapping father, but said she was never convicted of anything because father recanted his claim. Father did not mention the slapping incident—he claimed to have a "wonderful" relationship with mother—but disclosed that the criminal court presiding over his charges related to the huffing incident had issued a restraining order barring contact between him and L.M., and also ordered him to take 52 weeks of parenting classes. The assessor recommended that both parents participate in parenting and drug education classes and receive other services.

When the DCFS social worker visited the home a few days later, she noted (and mother and D.S. independently confirmed) that father had moved out, in compliance with the restraining order. The social worker observed that D.S. "appeared to be happy and healthy with no visible marks or bruises," and the home was clean with no visible safety hazards. Mother said that D.S. and L.M. were doing well but missed father. Mother denied knowing that the nitrous oxide had been in the back seat on April 21, and "said that the police report was full of lies."

On June 3, 2016, the social worker contacted mother and father about drug testing. Both said they would report for an on-demand test the next day, a Saturday. The social worker received an email from mother the following Monday claiming (and attaching photos showing) the testing facility was closed on Saturday. The social worker told mother to make up the test that

day. Mother reported that she went to the testing facility but could not test because her name was not on the list, and could not reach either of the social workers she attempted to call. She further told the social worker she could not keep leaving work to drug test and said she would not be available to drug test until June 17, 2016. The social worker told mother, "on-demand drug tests do not work that way."

On July 1, 2016, Mother asked the social worker if the case would be closing soon. The social worker told her it would not. She further informed mother that DCFS planned to request a warrant to remove the children from father and "it would be highly likely that mother would also be included in the warrant since she had the same responsibility with her son in the car and the fact that DCFS does not have a clean drug test for either of them." Mother agreed to take a drug test that day. That test, the only one mother took, was negative for all drugs and alcohol.

The social worker also spoke to D.S.'s father, G.S., on July 1. She informed G.S. about the open referral against mother and father and asked him if mother and father used drugs. G.S. said he had "not really noticed anything when he interfaces with them." G.S. said he did not have any concerns about D.S., whom he saw on the weekends pursuant to "an arrangement" with mother. G.S. expressed a willingness to take care of D.S. full time.

On July 5, 2016, the social worker visited mother at maternal grandmother's home, where she and L.M. were now residing. Mother told the social worker that she was not seeing father anymore—she only talked to him by phone—and that L.M. missed him. Mother further stated that "she is very sad because she did not do anything wrong and she might have her children

taken from her care." Maternal grandmother asked to be considered for placement of L.M. and assured the social worker that mother would be able to move out if L.M. were placed there.

The social worker visited G.S.'s home on July 6 and spoke to G.S., D.S., and D.S.'s paternal grandmother, who lived at the home. G.S. stated that he paid child support and saw D.S. regularly. He further stated that he had "been caring for his son lately" and intended to seek custody of D.S. if the juvenile court did not grant him full custody. D.S. told the social worker he liked spending time with G.S. and his paternal grandmother. The social worker noted that D.S. appeared to be happy and healthy.

On July 12, 2016, the social worker served mother with a removal order for both children. The social worker explained that D.S. would remain with G.S., and that L.M. could stay with maternal grandmother if mother moved out of maternal grandmother's home. Mother agreed to move out and stated that she likely would move back to the family home with father, whose restraining order precluding him from seeing L.M. remained in effect.

Section 300 Petition and Related Reports

DCFS filed a petition under Welfare and Institutions Code, section 300[1] on July 15, 2016. In counts a-1 and b-3, it alleged that mother and father's history of domestic violence—the slapping incident—endangered D.S.'s and L.M.'s physical health and safety and placed them at risk of serious physical harm, damage, and danger. (§ 300, subds. (a) & (b).) In counts b-2 and j-1, DCFS alleged that mother and father placed L.M. and D.S. at

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

risk by placing nitrous oxide near L.M. and allowing father to use nitrous oxide in L.M.'s presence. (§ 300, subds. (b) & (j).) In count b-1, DCFS alleged that father's abuse of nitrous oxide and marijuana, along with mother's failure to protect the children from it, placed the children at risk. (§ 300, subd. (b).)

DCFS filed a detention report in conjunction with the section 300 petition, in which it related the above facts about the April huffing incident and ensuing investigation. It also filed an addendum report documenting its efforts to apprise mother, father, and G.S. of the allegations contained in the petition, as well as the date and time of the detention hearing.

Detention Hearing

The juvenile court held a detention hearing on July 15, 2016. Mother, father, and G.S. appeared and were appointed counsel. The court found G.S. was the presumed father of D.S. and father was the presumed father of L.M. It further found that G.S. was non-offending. The court admitted the detention report into evidence and concluded it established a prima facie case for detaining the children and showing that they were persons described by section 300.

The court released D.S. to G.S. and ordered L.M. detained with maternal grandmother. The court ordered monitored visitation for mother and gave DCFS discretion to allow mother to return to maternal grandmother's home. The court further ordered DCFS to provide mother and father with referrals for services including parenting classes, counseling, and drug testing. Mother requested that the adjudication hearing be held within the 15-day period required by section 334. The court granted that request and ordered a social worker to be on call for the hearing, which it set for August 12, 2016.

Jurisdiction/Disposition Report

In the jurisdiction/disposition report provided to the court on August 10, 2016, DCFS stated that D.S. remained with G.S. and L.M. remained with maternal grandmother. Both children were doing well. Mother visited L.M. daily but only spoke to D.S. by phone because "she didn't want to 'push the issue'" with G.S. Father visited L.M. once or twice a week despite the criminal court's restraining order; the social worker "made the [maternal] grandmother aware of the restraining order and let her know that the father can no longer visit with the child."

DCFS interviewed mother and father separately. Mother denied engaging in physical violence against father. She explained that the slapping incident "'was before [L.M.] was born. I was never convicted. He recanted. There has never been physical violence.'" Mother also denied that father abused marijuana or nitrous oxide. She reiterated that she believed father had the nitrous oxide tank "in the back" of the car for work, that father did not use nitrous oxide around her or at home, and that she did not see him doing anything when L.M. was in the car. Father likewise denied the slapping incident occurred and further denied using nitrous oxide on the day of the huffing incident. Father claimed that the nitrous oxide tank had been in the trunk, not the car, and told the social worker, "' That day, I was not on it. He [Officer Ortiz] could have done a drug test. He didn't do it."

Both mother and father told DCFS that they wanted to regain custody of D.S. and L.M. G.S. requested that D.S.'s case be closed with a family law order giving him full legal and physical custody. Mother expressed concern about this request, on the grounds that G.S. allegedly had guns in the house and used methamphetamine. DCFS did not find any weapons during its "thorough inspection" of G.S.'s home, and his drug test was

negative for methamphetamine.

As of July 27, 2016, mother had not enrolled in any classes or programs; the social worker emailed mother a resource guide that same day. Mother confirmed receipt of the guide the following day. The social worker also referred mother to the 211 telephone hotline after mother reported she had difficulty finding classes that met on the weekend. Father claimed he had enrolled in a parenting class in mid-July.

DCFS recommended that the court terminate the case as to D.S., with full legal and physical custody to G.S. It further recommended that the court assume jurisdiction over L.M. and place him in foster care. DCFS recommended that mother receive family reunification services for six months and participate in parenting classes and individual therapy. DCFS identified a social worker and a dependency investigator who could testify to the information contained in the report.

Hearing

At the August 12, 2016 hearing, the trial court admitted the detention and jurisdiction/disposition reports into evidence. DCFS did not present any further evidence concerning jurisdiction, and neither did any other party. Counsel for mother asked the court to dismiss the allegations concerning the slapping incident because there was no evidence of current domestic violence. Counsel suggested that the allegations stemming from the huffing incident also were stale, since the incident occurred "almost four months ago," and mother had begun her parenting class and developed an understanding she needed to be "hypervigilant on what is maybe around her children, or who may be using certain substances around her children."

After submitting these arguments on the issue of jurisdiction, mother's counsel asked the court "to put the

disposition over, set it for contested disposition." He explained that mother "would like to have an opportunity to move in with her mother, the maternal grandmother . . . . There can be a safety plan that can be put in place for mother to live there. [L.M.'s] father does have a restraining order, a three-year restraining order. Mother understands that he needs to do certain things in order to take care of that to have contact with [L.M.]. But she is requesting that the court put disposition over. We get a supplemental report as to mother's participation in parenting program; what insight she has gained. And also report from the maternal grandmother regarding the potential visitation orders that the court may make."

Counsel for G.S. and DCFS asked the court to "go forward on dispo today"; counsel for father and counsel for the children did not take a position on that request. When the court stated that it was inclined to proceed to the disposition hearing immediately, mother's counsel reiterated his request that the court "put disposition over." The court interjected, "Put it over for a progress report, but at this point four months in, mother is still living with [father]," and "that's why the Department isn't even thinking of placing the children with her." Mother's counsel responded by saying that "mother would like to have the court put over disposition."

The court reminded mother's counsel that mother requested an adjudication with no time waiver, and stated, "It's adjudication and dispo. It's not just adjudication." The court further stated, "Today is the day for the hearing. So if you want to put on testimony or witnesses, be my guest."

Mother's counsel again objected that the hearing was "set today for adjudication" only. The court responded, "And disposition. That's what this report says: juris and dispo." It continued, "That's what we're here for, counsel."

Mother's counsel asked the court if it would put the matter over to second call so he could call the dependency investigator as a witness. Though it initially stated, "I don't know what the D.I. is going to add to this," the court nonetheless agreed to put the matter on second call if the dependency investigator could be brought in, and "passed" the hearing for that purpose.

After the court said it would pass the hearing to the afternoon, mother's counsel said, "Your honor, we can - - I can go forward I'll make my record." He then proceeded to his disposition argument, contending, "I would argue that the Department failed today [to show] that there is clear and convincing evidence that there is risk of the child being returned to mother. Allowing her to reside in the maternal grandmother's home, there is a safety plan that can be put in place to prevent the children from remaining removed from mother. And she's asking that the court allow her to reside with the maternal grandmother. As father's counsel stated, the parents are living with relatives right now. They don't have anywhere else to go. Mother would have an opportunity to be with the children at the maternal grandmother's home. The court can ensure the safety of the children by having an extra set of eyes with the maternal grandmother being there. There is a restraining order that father have no contact with [L.M.]. That's an added safety measure that the father will not have contact with him. So the mother is again requesting that the court return the children with a safety plan [so] she [can] live with the maternal grandmother."

Father's counsel joined mother's counsel's request, but DCFS opposed it. DCFS counsel argued that maternal grandmother could not be trusted to ensure L.M.'s safety because she allowed father to visit in violation of the restraining order. She further challenged mother's and father's credibility, as "they

were still in denial that the nitrous oxide even was in the car," and continued to claim that the police fabricated evidence. The children's counsel agreed with DCFS counsel that the children could not be safely returned to either parent's care. She added that DCFS tried to work with mother and father for three months prior to filing the petition "to assist them to see if there was any way to leave the children in the home," but "the parents were uncooperative, did not drug test throughout the initial referral process of the investigation."

The court sustained the petition on the counts related to the huffing incident (b-2 and j-1) and father's substance abuse and mother's failure to protect (b-1). It dismissed the allegations related to the slapping incident after finding that DCFS "failed to preponderate as to those allegations."

The court also made dispositional findings. It placed D.S. with G.S. and terminated jurisdiction over him pursuant to section 361.2, subdivision (b)(1). The court granted G.S. sole legal and physical custody of D.S., with monitored visits for mother. Mother's counsel objected to the orders concerning D.S. and asked the court to "set that for contested hearing." The court overruled the objections, stating, "There is no need for jurisdiction. There is no services [*sic*] that this father needs with this child. And there is no need for hearing either." The court ordered L.M. placed with maternal grandmother, but ordered DCFS to "investigate possibly allowing" mother to move in with them "if its [*sic*] deemed appropriate with safety measures in place." In the interim, the court granted mother monitored visits. It further ordered reunification services for her, including parenting classes and individual counseling. The court set the matter for a progress hearing in eight weeks, and a review hearing in six months.

Mother timely appealed.

DISCUSSION

I. The appeal is not frivolous or moot.

Mother contends that she "had an absolute right to a contested disposition hearing" and that the juvenile court deprived her of that due process right by holding the disposition hearing immediately after the jurisdiction hearing rather than granting her request to "put over" disposition to a later date. DCFS responds that these contentions not only fail on the merits, but also that mother's appeal should be dismissed as frivolous due to mother's counsel's agreement to go forward without calling the dependency investigator, or as moot due to mother's receipt of reunification services.

We previously denied DCFS's motion to dismiss the appeal due to mother's attorney's alleged waiver of a contested hearing, and we reject that argument here as well. Waiver of an argument or issue generally is not a procedural bar warranting dismissal of the appeal at the threshold. Although this court has the inherent power to dismiss appeals based upon improper or frivolous grounds, "it is a power that should not be used except in the absolutely clearest cases." (*People ex rel. Lockyer v. Brar* (2004) 115 Cal.App.4th 1315, 1318.) There is a strong preference for resolving cases on their merits, which we exercise here.

Of course, it would be improper to reach the merits if, as DCFS contends, mother's appeal is moot. It is a court's duty to decide """"actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it."""" (*In re N.S.* (2016) 245 Cal.App.4th 53, 58, quoting *Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541.) The "critical factor in considering whether a dependency appeal is moot is whether the appellate court can

provide any effective relief if it finds reversible error." (*In re N.S.*, *supra*, at p. 60.)

We are not persuaded that mother's receipt of reunification services renders her appeal moot. Mother contends that she did not receive an appropriate disposition hearing. If we were to agree with her, we would remand so that such a hearing could be held. Mother's receipt of services in the interim has no bearing on this issue or the efficacy of mother's relief and accordingly does not render this appeal moot.

II. Mother's request for a continuance properly was denied.

DCFS characterizes mother's requests that the disposition hearing be "put over" as requests for a continuance rather than requests for a contested hearing, and argues that the court did not abuse its discretion in denying them. Mother rejects this characterization. In her reply brief, she states, "Mother did not argue that she had an absolute right to a continuance or that the juvenile court abused its discretion in denying a request for a continuance. Mother's argument is that the juvenile court's refusal of Mother's request to put disposition out for a short time for a contested hearing resulted in the denial of her due process right to a contested disposition hearing."

We agree with DCFS that mother asked for a continuance below and currently challenges the trial court's denial of that request. Although mother's counsel did not use the words continue or continuance, he requested that the court "put the disposition over," "put disposition over," "put over disposition," and "put it over." The colloquial verb phrase "put over" generally is understood to mean "continue to a later date." (See, e.g., *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 841 ["Tonya M. appeared at the June 26 continued six-month review hearing, and the matter was put over for a contested hearing on July 24,

later continued to August 16 . . . ."]; *In re H.E.* (2008) 169 Cal.App.4th 710, 726 ["The disposition, due to occur the next day, was put over for five weeks on parents' motion to continue."]; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1532 ["The matter was continued to September 1997, then put over several more times because DCFS had not obtained a medical report . . . ."]; *In re Ciraolo* (1969) 70 Cal.2d 389, 397, fn. 4 ["Upon return of the parties to the calendar court petitioner again asked for a continuance, and the case was put over to Wednesday morning."].) Indeed, mother acknowledges in her opening brief that she "asked the juvenile court to 'put disposition over' to a later date," and argues, "The juvenile court denied mother due process *when it refused her request to set the disposition hearing out to a future date* because it denied mother her absolute right to a contested hearing." Regardless of mother's phrasing here or below, this is a request for a continuance, and a contention that the court erred in denying it.

Section 358 governs disposition hearings and continuances thereof. Subdivision (a) provides, "After finding that a child is a person described in Section 300, the court shall hear evidence on the question of the proper disposition to be made of the child. Prior to making a finding required by this section, the court may continue the hearing on its own motion, the motion of the parent or guardian, or the motion of the child . . . ." Under this provision, (1) the court must conduct a hearing on disposition—"shall hear evidence"—and (2) such a hearing must follow the court's assertion of jurisdiction. Notably, the statute does not clarify how quickly the disposition hearing must follow the jurisdictional hearing. As a matter of practice, however, "the dispositional hearing often follows immediately after the jurisdictional hearing, and in some counties the social worker prepares a combined jurisdictional and dispositional court report

or social study." (Abbott, et al., Cal. Juvenile Dependency Practice (2017) § 5.1, p. 315.) Nothing in the statute prohibits this procedure; it is well recognized that "[t]he dispositional hearing may immediately follow the jurisdictional hearing." (*Id.* at § 5.6, p. 320.)

The court "may continue" the hearing to a later date, but is not, as mother suggests, required to do so. "May" is permissive (§ 15), and "[c]ontinuances are discouraged in dependency cases" (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 604), because "[c]hildhood does not wait for the parent to become adequate" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310). Section 352, which governs continuances in juvenile dependency litigation generally, provides that continuances "shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance." (§ 352, subd. (a); see also Cal. Rules of Court, rule 5.550(a).) It further provides that requests for continuance generally must be made in writing "at least two court days prior to the date set for hearing," and must be supported by "specific facts showing that a continuance is necessary." (Cal. Rules of Court, rule 5.550(a)(4).) Continuances of disposition hearings for children who are detained generally must be limited to "10 judicial days" (§ 358, subd. (a)), unless a party requests a longer extension and a longer extension would not be contrary to the interest of the children. (§ 352, subd. (a).) "Exceptional circumstances" are required to warrant continuing the disposition hearing to more than 60 days after the detention hearing, and the court is prohibited from setting the disposition hearing more than six months after the detention hearing. (§ 352, subd. (b).)

We review the court's decision to deny a continuance for abuse of discretion. (*In re Karla C.* (2003) 113 Cal.App.4th 166,

180.) "Discretion is abused when a decision is arbitrary, capricious or patently absurd and results in a manifest miscarriage of justice." (*Ibid.*)

Mother's counsel orally requested that the disposition hearing be continued so mother could attend more parenting classes and move away from father. Mother's counsel also wanted DCFS to prepare and submit to the court a supplemental report. Although such a report would be evidence introduced by DCFS, it appears that mother believed the report would have been favorable to her and undermine DCFS's position that the children should be placed outside her care. Indeed, mother argued in her opening brief that "[h]ad such an investigation been conducted, it is probable that DCFS would have reported that Mother was participating in services and that allowing Mother to retain custody of the children on the condition that she reside with the maternal grandmother was a viable alternative to removal."

The juvenile court did not abuse its discretion by denying mother's belated oral request to continue the hearing for this purpose. Mother was not entitled to compel DCFS to come forward with additional evidence she believed would be favorable to her. As we discuss further below, mother had a due process right to test the adequacy of DCFS's evidence and present evidence supporting her position. She did not have the right to continue the hearing to allow more time for her to improve her record of cooperation with DCFS. While mother's position acknowledges the reality that "[p]arental remorse for an incident of abuse and early enrollment in ameliorative services go a long way toward convincing the court that there is minimal danger to the child" (Abbott, et al., Cal. Juvenile Dependency Practice (2017) § 5.25, p. 340), the court is not obligated to afford a parent more time to make this showing. Mother's counsel did not point

to any circumstances preventing him from proceeding with the disposition hearing immediately after the jurisdictional hearing. The court was well within its discretion to conclude that mother's request was not supported by the good cause necessary to warrant a continuance.

III. Mother received the process to which she was entitled.

Mother argues that the court violated her "absolute due process right to a contested disposition hearing." This claim, which we review de novo, is not supported by the record. (*In re J.H.* (2007) 158 Cal.App.4th 174, 183.)

"The dispositional hearing is . . . the most complex hearing in the dependency process because of the many issues the court must address." (Abbott, et al., Cal. Juvenile Dependency Practice (2017) § 5.1, p. 315.) The high stakes of this hearing give rise to a relatively high level of due process protection for parents. Due process is "a flexible concept dependent on the circumstances" (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122), and "[d]ifferent levels of due process protection apply at different stages of dependency proceedings." (*In re Thomas R.* (2006) 145 Cal.App.4th 726, 733.) As a general matter, parents have the "right to confront and cross-examine adverse witnesses at contested hearings held before the permanency planning stage," including the disposition hearing. (*Ibid.*; see also *In re Corey A.* (1991) 227 Cal.App.3d 339, 348 ["[D]ue process insures [*sic*] a parent the right to cross-examine any testifying witness, and the right to examine persons whose evidence is compiled within a social study received in evidence."].) At later hearings, and those concerning issues on which a parent bears the burden of proof, the court may require the parent to make an offer of proof before granting him or her a contested evidentiary hearing on that issue. (*In re Thomas R.*, *supra*, at p. 732.) As a matter of

practice, such a showing typically is not required at the dispositional hearing. (Abbott, et al., Cal. Juvenile Dependency Practice (2017) § 5.7, p. 323.)

At the disposition stage of this case, mother did not present any evidence of her own, but sought to confront and cross-examine the dependency investigator. The court granted mother's request to do so and agreed to trail the hearing to the afternoon calendar so that the investigator, who had been ordered to be on call, could appear for that purpose. Indeed, mother acknowledges that counsel "was provided an opportunity to secure the presence of the social worker and also to make argument on Mother's behalf." This is the process to which mother was entitled at this juncture: the opportunity to confront and cross-examine the individuals who prepared the admitted reports and documents, as well as any other witness who testified at the hearing. Mother also was entitled to introduce evidence of her own, including her own testimony or that of witnesses she subpoenaed, to establish that DCFS failed to meet its burden of showing by clear and convincing evidence that the children should be removed from her care. Mother was not entitled to compel DCFS to produce additional evidence that she could test or buttress at a later date.[2]

Mother's counsel declined the court's invitation to call the dependency investigator and test DCFS's current evidence—an opportunity mother now claims "would have been useless" in any event—by telling the court, "we can - - I can go forward" and immediately proceeding to argument. This undermines mother's

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[2] Mother likewise did not have an absolute due process right to an evidentiary hearing before the court made exit orders with respect to D.S. under section 361.2, subdivision (b)(1). (*In re A.B.* (2014) 230 Cal.App.4th 1420, 1439-1440.)

contention that she was denied a contested hearing. "A hearing denotes an opportunity to be heard and to adduce testimony from witnesses" (*In re James Q.* (2000) 81 Cal.App.4th 255, 264), an opportunity which mother, through counsel, declined. If mother believed DCFS's evidence was inadequate to support a removal order, she and her counsel should have taken advantage of the opportunity the court extended to probe that evidence or present further evidence, rather than limiting her presentation to argument. We conclude that mother was extended the process to which she was entitled.

DISPOSITION

The orders of the juvenile court are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.